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Some Outstanding 1945 State Legislation

Uniform Acts

The Uniform Stock Transfer Act was adopted in 1945 by Delaware, Nevada, Oklahoma, South Carolina and Wyoming.[1]

In Oregon, the Uniform Acknowledgment Act, which was enacted in 1941 was repealed.[2]

Payment of Taxes

Arkansas has provided that hereafter its Annual Franchise Tax of domestic and foreign corporations is to be paid to the Commissioner of State Revenues, instead of to the State Treasurer.[3]

In Michigan, the administration of the Chain Store Tax law has been transferred from the Secretary of State to the Department of Revenue.[4]

The fees payable upon the incorporation of an Oregon corporation are hereafter to be paid to the Corporation Commissioner of that state.[5]

In Maine, the Annual Franchise Tax of domestic corporations is hereafter to be paid to the State Tax Assessor.[6]

Income Taxes

The Pennsylvania Income Tax has been continued in effect for an additional two years. The provision disallowing deduction for any Federal income or excess profits taxes was amended to allow a deduction of the Declared Value Excess Profits Tax.[7]

The provisions of the Minnesota Income Tax Law requiring withholding at the source in connection with payments to nonresidents for personal services performed in the state have been repealed.[8]

The Oregon Corporation Excise (Income) Tax Return, heretofore filed on or before the first day of the fourth month after the close of the fiscal year, will hereafter be due on or before the fifteenth day of that month. This effects a change from April 1 to April 15 in the case of calendar year companies.[9]

Franchise Taxes

In New Jersey, on *January 1, 1946*, a new Corporation Business Tax or Franchise Tax will become effective, superseding the present Franchise Taxes payable by both domestic and foreign corporations.[10]

A temporary increase in the rate of the Rhode Island Corporate Excess Tax from 40¢ to 50¢ per $100, which has been in effect for several years, was extended to the tax due in 1945 and 1946.[11]

Annual Report

Oregon corporations for profit are required, at least once each year, to furnish their stockholders with a financial statement showing profit and loss, income and expense and their financial condition.[12]

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[1] Delaware Senate Bill 62; Nevada S. B. 66; Oklahoma S. B. 148; South Carolina Act No. 310; Wyoming House Bill 85. [2] Ch. 380. [3] Act of 201. [4] Public Act No. 103. [5] Ch. 301, amending Sec. 77-205 Oregon Compiled Laws. [6] H. B. 445. [7] Act No. 91. [8] Ch. 604. [9] H. B. 267, amending Sec. 110-1515. [10] Ch. 162. [11] H. B. 944. [12] S. B. 184.

In Michigan, the requirements that a foreign corporation increasing its authorized capital stock or increasing the proportion of its capital stock represented by property used and business done in the state, file a statement within 30 days after such increase, has been altered to call for such a statement within 60 days after an increase in authorized capital stock and on or before May 1 of the year following an increase in the proportion of its authorized capital stock represented in the state.[13]

Taxes Repealed

The Colorado Service Tax was repealed as of February 28, 1945.[14]

Intangible personal property was exempted from the general property tax in New Jersey by an act effective April 13, 1945.[15]

In Minnesota, moneys and credits were permanently exempted from property taxes.[16]

Sales and Use Taxes

The North Dakota Retail Sales Tax, which was scheduled to expire June 30, 1945, was extended so as to be effective until June 30, 1947.[17]

The Kansas Use Tax has been revamped so that it is now to be collected by the retailer, instead of being remitted, in each instance, by the purchaser, as was previously provided. The retailer is required to be registered and to file monthly returns and make monthly payments.[18]

Corporation Law

A new section has been added to the Delaware Corporation Law which requires that in any derivative suit instituted by a stockholder it must be stated in the bill of complaint that he was a stockholder at the time of the transaction of which he complains or that his stock thereafter devolved upon him by operation of law.[19] Maryland, New Jersey and Pennsylvania have enacted similar provisions.[20]

In Maine, the duration of the period for which proxies are valid has been extended from six months to one year before the meeting mentioned in the proxy.[21]

A New Jersey act provides that a plaintiff shareholder may be required to put up security in certain cases to reimburse the corporation, on whose behalf the action is brought, for the expenses it may incur and for the expenses of the other defendants which by law, the charter or by-laws, it may be required to pay.[22]

A Maryland statute permits a corporate defendant, domestic or foreign, to require the plaintiffs in a derivative suit to give security for reasonable expenses, excluding attorneys' fees, where they are the holders of less than 5% of the outstanding shares of any class of the corporate stock or voting trust certificates unless such securities so held have a market value in excess of $25,000.[23]

In Oregon, the fees payable upon merger or consolidation have been set out in a 1945 statute.[24]

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[13] Act No. 229. [14] S. B. 2. [15] Ch. 163. [16] Ch. 453. [17] S. B. 87. [18] S. B. 290. [19] S. B. 166. [20] Maryland: Ch. 1072; New Jersey: Ch. 131; Pennsylvania: Act No. 114. [21] H. B. 1185. [22] Ch. 131. [23] Sec. 195, Art. 16, as amended by Ch. 989. [24] Ch. 301.

Domestic Corporations

Delaware.

In suit of objecting stockholders to enjoin merger, where the reclassification of stock had been ruled not unfair, and petitioners subsequently proceeded to an appraisal under Sec. 61, court denies motion to reopen judgment, as being futile, since petitioners had exchanged rights in stock for a money claim against the consolidated corporation. In *Hottenstein et al. v. York Ice Machinery Corporation,* 136 F. 2d 944, (The Corporation Journal, October, 1943, page 7), the United States Circuit Court of Appeals, Third Circuit, affirmed a judgment of the District Court, which followed a Delaware Supreme Court ruling, upholding a merger of Delaware parent and subsidiary corporations which involved the extinguishing of accumulated dividends on the parent's preferred stock. The Circuit Court expressed the opinion that "a court of the United States bound by the rule of *Erie R. Co. v. Tompkins,* (304 U. S. 64, 58 S. Ct. 817, 82 L. Ed. 1188, 114 A. L. R. 1487) was powerless to afford aid to a stockholder until a reclassification reached that degree of unfairness where it might be deemed to amount to a cancellation of the preferred stockholders' accumulative unpaid dividends without adequate compensation therefor." Subsequently, the petitioner here and certain other preferred stockholders, who had not consented to the merger and who had made appropriate objection thereto, proceeded to an appraisal pursuant to Section 61 of the General Corporation Law of Delaware, Section 2093, Revised Code 1935. That appraisal proceeding, now completed in so far as action by the appraisers is concerned, and awaiting review by the Chancellor of Delaware, resulted in a majority of the appraisers concluding that the value of the petitioner's preferred stock at the time of the merger was less than its par value. The petitioner moved, in the Circuit Court, for leave to file a complaint in the nature of a bill of review in the District Court, based upon inconsistencies in evidence presented by the corporation as to the value of its stock. The court, in denying the motion, concluded that "the petitioner by embarking on an appraisal under Section 61 of the Delaware Corporation Law, has put himself in a position where the surviving corporation could enforce its right to claim his stock on the tender of the appraised price by an original bill for specific performance. See Section 61 providing that 'the decision of the appraisers as to the value of such stock shall be final and binding upon the corporation and (the) stockholder.' See also *Root v. York Corporation,* Del. Ch. 1944, 39 A. 2d 780, and *Chicago Corporation v. Munds,* 20 Del. Ch. 142, 172 A. 452. In other words, the petitioner has exchanged his rights in stock for a money claim against the consolidated corporation. Under such circumstances a bill of review filed in the District Court of Delaware would be a futility." *Hottenstein et al. (Moore, Intervenor) v. York Ice Machinery Corporation,* 146 F. 2d 835. Seymour M. Heilbron of New York City (William H. Foulk of Wilmington, Del., and Arthur

Garfield Hays and Alan S. Hays of New York City, on the brief), for plaintiffs. Aaron Finger of Wilmington, for defendant. George D. Hornstein of New York City, amicus curiae. *(Petition for writ of certiorari filed in the Supreme Court of the United States, May 16, 1945; Docket No. 1282. Certiorari denied, June 18, 1945.)*

Single instance of election of five directors, where by-laws called for three, ruled not to effect implied amendment of the by-laws. At the time of the latest corporate election on February 1, 1943, the two stockholders, who each owned 50% of the common and only voting stock of defendant company, elected five directors, although the by-laws provided that only three directors should be elected. The question to be determined was whether the corporate by-laws were impliedly amended by the action taken by the stockholders in electing five directors. The petition filed was for a summary order directing that a stockholders' meeting be held to elect directors and seeking the appointment of a Master for that purpose. This was granted by the Court of Chancery, New Castle County, which indicated that three directors should be elected. The court remarked that the existence of by-laws may be established by custom or by acquiescence in a course of conduct by those authorized to enact them, and that the same principle, necessarily, applies to an alleged amendment, pointing out that in a particular case, the question is always largely one of fact. "The corporate defendant," said the court, "claims that as both stockholders participated in the election, contrary to the by-laws, no proof of custom or usage is necessary to show acquiescence in the alleged resulting amendment. Where, as here, but one inconsistent act is relied on and it does not appear that the stockholders were actually aware of the by-law provision, an intent to amend is not demonstrated. The attendance by both stockholders at the subsequent directors' meetings has little bearing on the precise question. Furthermore, estoppel cannot be relied on in determining how many directors shall be elected at the contemplated stockholders' meeting. The prayer of the petitioner will, therefore, be granted and a Master appointed to conduct the corporate election of three directors." *In re Ivey & Ellington, Inc.*, 42 A. 2d 508. Caleb S. Layton of Richards, Layton & Finger of Wilmington, for petitioner. Clarence A. Southerland and Collins J. Seitz of Southerland, Berl & Potter, of Wilmington, for defendant. Commerce Clearing House Court Decisions Requisition No. 339860.

Kentucky.

Where charter permitted retirement of preferred stock "at the end of five years," court regards attempt at retirement twelve years later as not made within a reasonable time. In a recent case the Court of Appeals of Kentucky had occasion to consider a charter provision permitting the common stockholders to retire "at the end of five years" from the date of incorporation, July 1, 1925, the whole or any part of the preferred stock, "at a valuation of $110.00 per share, together with any accrued and unpaid dividends on such pre-

ferred stock." In September, 1942, seventeen years after the incorporation of the company, a majority of the owners of the common stock voted to retire the preferred stock at $110 per share, plus accrued dividends. The preferred shareholders denied their power to do so, claiming that it was lost by the failure to call the stock on a specific date, namely, "at the end of five years" from July 1, 1925. The Court of Appeals affirmed a judgment in favor of the preferred stockholders, observing: "The Court construes the provision in the charter of the corporation giving it the right to retire the preferred stock 'at the end of five years' the same as the circuit court construed it, namely, within a reasonable time thereafter, and that more than twelve years was not a reasonable time." *Thompson et al. v. Fairleigh et al.*, 187 S. W. 2d 812. Charles G. Middleton and Bullitt & Middleton of Louisville and W. E. Rogers, Jr., of Hopkinsville, for appellants. Trimble & Trimble, White & Clark, S. Pettus White and H. W. Linton of Hopkinsville, for appellees.

New York.

Charter provision that five of six directors constitute quorum, upheld. Petitioner, a vice-president of respondent company, who had been removed from that office by action of the board of directors, sought an order, pursuant to Civil Practice Act, Sec. 1283 et seq., to compel respondents to make available to him as an officer and director the corporate books and records and for other relief. Petitioner's wife was the owner of all the shares of Class B stock and had the exclusive right to the election of two of the six corporate directors. She had resigned as one of these directors. The Supreme Court, Special Term, Queens County, ruled that her written resignation, her certification of the election of her husband to take her place, and his consent, were binding upon and were required to be recognized by the corporation and that it was unnecessary and useless to require the routine of a formal election to make his election valid. His removal as vice-president was effected at a meeting of the board at which only four directors were present, all four voting in favor of the resolution removing petitioner. However, the amended certificate of incorporation provided that "The presence of at least five of the directors at any meeting of the Board of Directors shall constitute a quorum for the transaction of business and the action and consent of at least five directors of the corporation shall be necessary to constitute the act of the Board of Directors for any and all purposes and on all matters." The court concluded that there was nothing illegal or inequitable in this provision that five of the six directors constitute a quorum or in a provision in the charter for the election of two directors by each of the corporation's three classes of stock, regarding the situation as controlled by the decision of the Court of Appeals in *Benintendi et al. v. Kenton Hotel, Inc. et al.*, 294 N. Y. 112, 60 N. E. 2d 829, (The Corporation Journal, June, 1945, page 365). Petitioner was therefore granted the right to examine the books. *Wohl v. Avon Electrical Supplies, Inc. et al.*,

55 N. Y. S. 2d 252. William Peyton Marin of New York City, for petitioner. Goldberg, Silverstein & Morris of Jamaica, for respondents.

Posting of security under Sec. 61-b, Gen. Corp. Law, ruled not required of plaintiff holding more than five per cent. of corporate stock. In a derivative stockholder's action, brought by a single stockholder against his corporation and others, judgment was rendered for the defendants. Defendants thereupon applied under Section 61-b of the General Corporation Law for an assessment of the reasonable expenses, including attorneys' fees, to be taxed as costs against the plaintiff. The application was denied, for the reason that the plaintiff was the holder of more than 5% of the stock of the defendant corporation and was under no obligation to post security for the payments sought, since Section 61-b limits such posting to derivative suits where the plaintiffs are holders of less than 5% of the outstanding shares of any class of the corporate stock, unless the shares so held have a market value in excess of $50,000. Defendants contended that there was a right to reimbursement implicit in the statute, from all unsuccessful plaintiffs, regardless of the extent of their stockholdings, if the legislative intent was to be effectuated. The Supreme Court, Special Term, Queens County, said it could not assent to this view and that the statute "must be held to impose the duty of reimbursement only upon the unsuccessful plaintiffs in stockholders' actions who hold less than five per cent. of the stock of the corporation unless their shares have a market value in excess of $50,000." The court felt that the classification of stockholders found in the statute could not be said to be arbitrary or capricious. *Isensee v. Long Island Motion Picture Co., Inc. et al.*, 54 N. Y. S. 2d 556. Abraham J. Multer (John P. McGrath, of counsel), of New York City, for plaintiff. Phillips, Nizer, Benjamin & Krim (Louis Nizer, of counsel), of New York City, for defendants Long Island Motion Picture Co., Inc., Coy Operating Co., Inc., and others.

Foreign Corporations

Nebraska.

Unlicensed foreign corporation, entering into contract for correspondence course, failing to comply with Nebraska laws relating to contracts of that type, denied right to enforce contract in Nebraska courts. Plaintiff foreign corporation furnished courses in the study of refrigeration and air conditioning by correspondence. It sued on a promissory note and contract, given by defendant for such a course, to recover a balance due. A section of the Nebraska law required that such a note, so given, bear the words "negotiable note given for tuition," and that such a contract bear the words "negotiable contract note given for tuition and scholarship," and another section provided that a note which failed to comply with such provisions was to be void. The note in question contained no such notation. The Supreme Court of Nebraska affirmed a judgment for the de-

fendant, concluding: "If a foreign corporation solicits, negotiates, or otherwise carries on business in this state contrary to local laws, and a contract growing out of such transaction is subsequently entered into and valid in another state, though invalid in this state, it will not be enforced in this state as a matter of comity. Under such circumstances, when the foreign corporation comes into this state to carry on its business as a matter of comity between states, there arises a reciprocal duty on its part to comply with the laws of this state, and, when it fails to do so, it will not be permitted to enforce the contract in the courts of this state." *Refrigeration & Air Conditioning Institute, Inc. v. Hilyard,** 18 N. W. 2d 548. F. C. Radke and Littrell & Patz of Lincoln, for appellant. O. B. Clark of Lincoln, for appellee.

* The full text of this opinion is printed in **The Corporation Tax Service, Nebraska, page 509.**

New York.

Service on unlicensed corporation set aside where activities in state were limited to solicitation of orders and some collections by salesman and where service was made upon one not a managing agent. The New York Supreme Court, Special Term, Part I, Kings County, granted defendant unlicensed foreign corporation's motion to set aside service of summons upon it under circumstances where plaintiff failed to show that the person served was vested with the necessary general authority to constitute him a managing agent and where its activities within the state consisted of the taking of orders, subject to acceptance by defendant in Illinois, from which state the products were shipped. Although the salesman had authority and was required to collect slow or delinquent accounts, all remittances for merchandise were made to the Illinois office. He maintained no office on behalf of the defendant and all communications from the defendant were addressed to him at his home. Some time before the commencement of the action, a sales campaign was conducted by independent contractors, to whom merchandise had been delivered by defendant. This had been completed prior to the service of summons. The court felt that it could not say that sufficient had been shown to enable it to hold the defendant was doing business in the State of New York. *Rubin v. Consolidated Royal Chemical Corporation,* 55 N. Y. S. 2d 489. George Firestone of New York City, for plaintiff. Fraenkel, Jackson & Levitt (Charles H. Levitt, of counsel), of New York City, appearing specially.

Suit, involving value of minority shares of merged foreign corporation, dismissed. In an action instituted in the state court and removed to the Federal District Court, plaintiffs had sought to recover the loss in value of 500 shares of common stock in a Virginia corporation which had been merged with a Delaware company. Plaintiffs, who had voted against the merger, complained against a credit allowed to the preferred shares, in the exchange of stock under the merger,

Not too muc

Corporations doing business in outside states sometimes, through ambiguities in the state's notices or vagueness in the law, pay a tax they don't need to pay at all, or pay at a higher rate than necessary. Sometimes they pay too little or, through oversight, get their payments in too late, and are penalized. They need the Corporation Trust system of statutory representation. It gives each company's lawyer advance notice of every state tax to be paid and state report to be filed, and furnishes him complete official information on which to figure rates, exemptions, etc. Don't let a client pay too much, or too little, or act too late—investigate how the Corporation Trust system will help.

--nor too little

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for cumulative dividends which had not been paid for a period of twelve years, objecting that preferred dividends, until declared, were not debts of the corporation and that it was not permissible to credit the preferred shares with them, even though the charter made preferred dividends cumulative. The District Court, in *Weiss et al. v. Atkins et al.*, 52 F. Supp. 418, (The Corporation Journal, March, 1944, page 128), had denied defendants' motion for an order dismissing the complaint and directing summary judgment for defendants. Plaintiffs appealed from a judgment dismissing the complaint on the merits after trial. The United States Circuit Court of Appeals, Second Circuit, reversed this judgment and dismissed the complaint, not on the merits, but because the District Court should have refused to entertain the action. The higher court remarked that "it would be an onerous added burden upon the corporation to subject it to suit in any foreign forum where a shareholder could serve it; and, moreover, there would be no uniformity in the recoveries, and therefore no equality of the treatment between the dissentients." Concluding its opinion, the court said: "It seems to us therefore that the court of a foreign forum has adequate ground at least for saying that it is the policy of Virginia to keep the ascertainment of the value of minority shares within its borders, even though dissenters are given alternative remedies." *Weiss et al. v. Routh et al.*, 149 F. 2d 193. Louis D. Frohlich and Schwartz & Frohlich (Herbert P. Jacoby, of counsel), of New York City, for appellants. James V. Hayes and Donovan, Leisure, Newton & Lumbard of New York City, (J. Leo Cope of Utica, of counsel), for appellees.

North Carolina.

Steamship corporation, engaged in coast-wise trade, ruled subject to service of process where its vessel made one entry into state. General Statutes, Sec. 55-38, provides for service of process upon a corporation having property or doing business in the state, whether incorporated under its laws or not, by serving an officer or agent in the state and, in the event of the corporation's failure to have such an officer or agent in the state, by serving the Secretary of State, the latter to mail a copy to the president, secretary or other officer of the corporation upon whom, if residing in the state, service could be made. Defendant unlicensed foreign corporation, operating a steamship in the coast-wise shipping trade, resisted service of process upon it, made upon the Secretary of State and forwarded to it, in a suit arising out of the collision of its vessel with a bridge in North Carolina owned by plaintiff highway commission. The vessel was also injured and more than two months elapsed before it was put in condition to proceed to its destination in North Carolina and discharge its cargo. The Supreme Court of North Carolina affirmed a decision upholding the service of process, regarding the corporation as doing business in the state. The court took into consideration the facts that defendant was a regular carrier of freight in the coast-wise trade, that it was not making a casual entry into port but one

which would be repeated as often as it could obtain cargo and that the single trip resulted in numerous transactions, lasting over a considerable period of time and in one alleged liability of considerable moment. The court also indicated that the validity of service would not be affected by reason of service upon the Secretary of State after the discontinuance of the business out of which the liability sued upon arose. *State Highway and Public Works Commission v. Diamond S. S. Transp. Corp.*, 34 S. E. 2d 78. Rountree & Rountree of Wilmington, for defendant, appellant. Charles Ross, Gen. Counsel, of Raleigh, and S. C. Wright, Sp. Counsel, of Wilmington, for plaintiff, appellee.

Taxation

Connecticut.

Goods stored in warehouses in other states and in transit ruled required to be included in tangible property factor when effecting allocation of net income to state. The allocation of net income derived from the manufacture, sale or use of tangible personal or real property is determined through the use of three fractions. The first of these represents "that part of the average monthly net book value of the total tangible property held and owned by the taxpayer during the income year which is held within the state." Plaintiff was such a corporation and, in making return of its total tangible assets, included liquor owned by it and stored out of the state in bonded and other warehouses and also liquor owned by it and in transit to its places of business. Defendant commissioner disallowed these items and, as a result, plaintiff's tax was increased, since the inclusion of these items by plaintiff in the denominator of the allocating fraction reduced the size of the fraction and in consequence the amount of the tax. The questions raised concerned whether such items of liquor in warehouses and in transit were to be included in the denominator of the allocating fraction as "tangible property held and owned" by the plaintiff. The Connecticut Supreme Court of Errors ruled that these items were to be included as such tangible property in computing the allocation mentioned. *McKesson & Robbins, Inc. v. Walsh,** 42 A. 2d 841. William Reeves, of Bridgeport, for the plaintiff. Thomas J. Conroy, Assistant Attorney General, with whom, on the brief, was Francis A. Pallotti, Attorney General, for the defendant. Commerce Clearing House Court Decisions Requisition No. 341341.

* The full text of this opinion is printed in **The Corporation Tax Service**, Connecticut, page 289-15.

Pennsylvania.

Inclusion of value of foreign corporation's investment in Pennsylvania corporation's capital stock in former's franchise tax base, held not to constitute double taxation. In *Commonwealth of Pennsylvania v. Monessen Amusement Co., Inc.*, 55 Dauphin 149, (The Corporation

Journal, June, 1944, page 192), the Court of Common Pleas, Dauphin County, held that the inclusion of the value of a foreign corporation's investment in a Pennsylvania corporation's capital stock in the foreign company's franchise tax base constituted double taxation under circumstances where the entire business of both corporations was carried on in Pennsylvania. Upon appeal, the Supreme Court of Pennsylvania has reversed the Dauphin County Court, concluding that no double taxation was effected. The court remarked that "the franchise tax is not a tax upon the property of the corporation, but upon the doing of business in this Commonwealth. There is, therefore, no resulting double taxation simply because the shares of a domestic corporation which has paid the capital stock tax, a property tax, are included in the computation of the value of the Pennsylvania franchise of a foreign corporation. Double taxation cannot exist where the subject matter of taxation in two acts is not the same." The court found no merit in a contention that the Franchise Tax Act discriminates against foreign corporations and in favor of domestic corporations because the latter are permitted an exemption under the Capital Stock Tax Act to the extent of the value of shares held in another domestic corporation, whereas a similar deduction is not permitted to foreign corporations in computing the value of their capital stock for the determination of the base of the franchise tax. The court remarked: "It is not necessary that the tax imposed upon foreign and domestic corporations be identical to avoid unconstitutional discrimination. A state may differentiate in its *method* of taxing foreign and domestic corporations and may use different incidence and base." *Commonwealth of Pennsylvania v. Monessen Amusement Co., Inc.*,* 42 A. 2d 158. B. B. Bastian, Deputy Attorney General and James H. Duff, Attorney General, for appellant. McNees, Wallace & Nurick, Ralph E. Evans, of Harrisburg, and Robert W. Smith and Smith, Best & Horn, of Greensburg, for appellee. Commerce Clearing House Court Decisions Requisition No. 338029.

* The full text of this opinion is printed in **The Corporation Tax Service**, Pennsylvania, page 843.

Foreign holding company, carrying on all of its activities in Pennsylvania, ruled subject to the franchise tax. In a recent decision involving the payment of the franchise tax by a foreign public utility and holding company, the corporation contended that it was not engaged in doing business in Pennsylvania. The Pennsylvania Supreme Court, however, found no merit in this contention, upon a showing of activities within the state which the court outlined as follows: "It is clear that everything which the corporation did during that year—and its activities were extensive—was done in this state. The fact that its business involved dealing in intangibles rather than tangibles does not relieve it from its just share of the tax burden. If its contention were to be adopted, no holding company could be subjected to taxation. The record shows that it held directors' meetings in this state, kept its securities in local bank deposit vaults, received and distributed large sums in dividends, rented an office here, and

in general conducted here the business which it was authorized by the Commonwealth to conduct. We hold that it was engaged in business in this Commonwealth within the meaning of the tax legislation." The court also rejected a contention that the state erred, in including in the wage and salary allocating fraction, as numerator and denominator, the figure of $5,000, which represented a "management fee" which the corporation paid to its parent company for supplying five officers at stated yearly compensations amounting to $5,000. The court remarked: "The device of paying their salaries through the parent corporation was ingenious but not conclusive of their status." It regarded these payments as "wages and salaries within the meaning of the Franchise Tax Act." *Commonwealth of Pennsylvania v. The American Gas Company,** 42 A. 2d 161, affirming 54 Dauphin 115. Hull, Leiby & Metzger, Arthur Hull, Geo. Ross Hull and William H. Wood of Harrisburg, for appellant. B. B. Bastian, Deputy Attorney General and James H. Duff, Attorney General, for appellee. Commerce Clearing House Court Decisions Requisition No. 338028.

* The full text of this opinion is printed in **The Corporation Tax Service,** Pennsylvania, page 845.

West Virginia.

Corporation, operating under contract with Federal Government upon land owned by Government, ruled subject to Business and Occupation Tax Act. The complainant corporation sought to restrain defendant State tax commissioner from paying into the State treasury an amount paid under protest by it to meet a quarterly assessment under the West Virginia Business and Occupation Tax Act. The assessment related to complainant's activities carried out under a lease from the United States Government of a factory in West Virginia. Complainant operated under "lump sum" contracts with the Federal Government, and claimed immunity from the tax as an agent or instrumentality of the Government carrying out a sovereign function. The West Virginia Supreme Court of Appeals sustained the tax, concluding that "the location of the complainant's plant upon land owned by the United States Government does not prevent the collection of a tax imposed by the State of West Virginia and that the manufacture of armor plate and deck plate under the circumstances alleged in the bill of complaint is not participation in the exercise of a sovereign function of the Federal Government in the absence of an Act of Congress so recognizing it." *Carnegie-Illinois Steel Corp. v. Alderson,** West Virginia Supreme Court of Appeals, July 3, 1945. Commerce Clearing House Court Decisions Requisition No. 342922; 34 S. E. 2d 737.

* The full text of this opinion is printed in **The Corporation Tax Service,** West Virginia, page 6219.

Appealed to the Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

October 1945 Term

INDIANA. Docket No. 4. *Hewit v. Freeman,* 51 N. E. 2d 6. (The Corporation Journal, November, 1944, page 233.) Indiana Gross Income Tax Act—application to proceeds from sales of corporate stocks and bonds by resident owner to nonresidents through brokers. **Appeal filed, March 13, 1944. Jurisdiction noted, April 3, 1944. Argued, November 8, 1944. Restored to Docket and assigned for reargument, June 18, 1945.**

NORTH DAKOTA. Docket No. 35. *Asbury Hospital v. Cass County et al.,* 16 N. W. 2d 523, which followed ruling in *Asbury Hospital v. Cass County et al.,* 7 N. W. 2d 438. (The Corporation Journal, October, 1942, page 232.) Constitutionality of North Dakota statute prohibiting corporation farming—application to non-profit hospital corporation. **Appeal filed, February 6, 1945. Probable jurisdiction noted and case transferred to the summary docket, March 5, 1945.**

PENNSYLVANIA. Docket No. 40. *In re Defense Plant Corporation, (Defense Plant Corporation v. County of Beaver),* 39 A. 2d 713. (The Corporation Journal, May, 1945, page 353.) State taxation—machinery owned by government agency and attached to freehold—taxation as real property. **Appeal filed, February 24, 1945. Probable jurisdiction noted, March 26, 1945.**

October 1944 Term

DELAWARE. Docket No. 1282. *Hottenstein et al. v. York Ice Machinery Corporation,* 146 F. 2d 835. (The Corporation Journal, October, 1945, page 5.) Stockholders' suit to enjoin merger—power of court to reopen judgment because of fraud. **Petition for writ of certiorari filed, May 16, 1945. Certiorari denied, June 18, 1945.**

* Data compiled from **CCH U. S. Supreme Court Service, 1945-1946.**

Regulations and Rulings

COLORADO—The Department of Revenue has recently completely revised the Colorado income tax regulations to conform with the latest amendments to the law. (Colorado CT, Report No. 183.)

GENERAL—Where it is desired to effect, before the end of the calendar year, either the withdrawal of a foreign corporation from a state in which it has been authorized to do business or the dissolution of a domestic corporation, counsel have usually found that it is advisable to initiate the dissolution or withdrawal proceedings in most states as early as possible. Thus, if there are time-consuming requirements with which compliance must be had, ample provision may be made to satisfy such requirements before the end of the year. Frequently such requirements call for the preparation of income and other tax reports, the auditing of the corporate books, or the obtaining of certificates from various state departments that all taxes due the state have been paid. Inasmuch as, in some instances, a month or more may be consumed in effecting such compliance, it is advisable to investigate and institute dissolution or withdrawal proceedings, wherever possible, well in advance of the close of the year.

GEORGIA—The Federal net income taxes deductible in making the return of income for state income tax purposes include Federal excess profits income taxes. (Opinion of Attorney General to the Commissioner of Revenue, Georgia CT, ¶ 14-509.)

IDAHO—Corporations applying for reinstatement are not required to file an annual report before reinstatement. If the corporation has paid for each year in which it has been in default, including the current year, the statutory penalty and the license fee, it has done everything necessary. In the following July, the corporation will be required to file an annual report, and to pay an annual license fee for the fiscal year then beginning. (Opinion of the Attorney General to the Secretary of State, Idaho CT, ¶ .010.)

INDIANA—Any petroleum products, including naphtha, testing higher than the minimum volatilities established by law for gasoline, is gasoline for the purpose of imposing the fees established by Section 9 of the oil inspection law. (Opinion of the Attorney General to the Auditor of State, Indiana CT, ¶ 40-502.)

IOWA—Property taxes paid in 1945 are the taxes for the year 1944. (Opinion of the Attorney General, Iowa CT, ¶ 2415.)

NEW YORK—A tax is payable under Section 180 of the Tax Law upon an increase in the authorized capital stock, even though such increase is in the exact amount of a prior reduction thereof. At the time of the previous reduction Section 180 provided that in such case the subsequent increase was not taxable, but this provision was deleted in 1933. Although the reduction was made under the former provision, nevertheless said increase is now taxable, for the taxpayer obtained no vested right to the continuance of the provision. (Opinion of the Attorney General, New York CT, ¶ .0031.)

Some Important Matters for October and November

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

CALIFORNIA—Quarterly Retail Sales Tax Return and Payment due on or before October 15.—Domestic and Foreign Corporations.

GEORGIA—Certified Statement for Registration due on or before November 1.—Domestic and Foreign Corporations.

INDIANA—Quarterly Gross Income Tax Return and Payment due on or before October 31.—Domestic and Foreign Corporations.

IOWA—Quarterly Retail Sales Tax Return and Payment due on or before October 20.—Domestic and Foreign Corporations.

LOUISIANA—Franchise Tax Report and Tax due on or before October 1.—Domestic and Foreign Corporations.

MASSACHUSETTS—Second instalment of Excise Tax due on or before October 20.—Domestic and Foreign Corporations.

NEW YORK—Second instalment of Income Tax of Business Corporations due on or before November 15.—Domestic and Foreign Business Corporations other than real estate companies.

NORTH DAKOTA—Quarterly Retail Sales Tax Return and Payment due on or before October 20.—Domestic and Foreign Corporations.

RHODE ISLAND—Semi-Annual Report to Division of Industrial Inspection during October and April.—Domestic and Foreign Corporations employing five or more persons in Rhode Island.

SOUTH DAKOTA—Quarterly Retail Sales Tax Return and Payment due on or before October 15.—Domestic and Foreign Corporations.

UNITED STATES—Withholding at source due on or before October 31. —Domestic and Foreign Corporations.

WEST VIRGINIA—Quarterly Business and Occupation (Gross Sales) Tax Return and Payment due on or before October 30.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York, 5, N. Y.

Amendments to Delaware Corporation Law, 1945. Contains complete text of the amendments adopted at the 1945 session of the legislature, giving for each one a brief explanation of its purpose and effect.

What Constitutes Doing Business. (Revised to October 1, 1943.) A 181-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business."

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We've Always Got Along This Way. A 24-page pamphlet of cases in various states in which corporation officials who had thought they were getting along very well with statutory representation by a business employe suddenly found themselves in trouble.

What! *We* Need a Transfer Agent? *Nonsense!* The foregoing is the title of a pamphlet which describes in detail, with many illustrations, the exact steps through which a stock certificate goes in being transferred from one owner to another by an experienced transfer agent.

Judgment by Default. Gives the gist of Rarden v. Baker and similar cases, showing how corporations qualified as foreign in any state and utilizing their business employes as statutory representatives are sometimes left defenseless in personal damage and other suits.

THE CORPORATION TRUST COMPANY
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THE CORPORATION JOURNAL

The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices.

When it is desired to preserve The Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

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